



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DELIVERED BY HAND

OCT 17 2007

Marc E. Elias, Esq.
Perkins Coie
607 Fourteenth Street NW
Washington, DC 20005-2011

Re: MUR 5849
Kathleen Cannon

Dear Mr. Elias:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on October 17, 2006, the Federal Election Commission found reason to believe that that your client, Kathleen Cannon, knowingly and willfully violated 2 U.S.C. §§ 441(b)(a) and 441f, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that knowing and willful violations of 2 U.S.C. §§ 441(b)(a) and 441f have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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You may also request an oral hearing before the Commission. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted. If such request is granted, the Commission reserves the right to request that your client agree to toll any statutory deadline or other deadline found in 11 C.F.R. part 111.

Should you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Thomasenia P. Duncan
General Counsel

Enclosure
General Counsel's Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Kathleen Cannon

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) MUR 5849
)
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GENERAL COUNSEL'S BRIEF

I. INTRODUCTION

On October 17, 2006, the Commission found reason to believe that Kathleen Cannon, the Senior Vice President of the Bank of America Corporation's Student Banking Division, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), by approving the reimbursement of contributions from Bank funds. The Commission also authorized this Office to conduct an investigation. Cannon was notified of the alleged violations by a Factual and Legal Analysis setting forth the factual and legal basis for the Commission's findings. See 2 U.S.C. § 437g(a)(2). To date, Cannon has not submitted any information to the Commission in response to its reason to believe findings and has refused to comply with a Commission subpoena to appear for her deposition or respond to a series of informal written questions regarding her role in the reimbursements at issue.

Having concluded an investigation, and based on the following factual and legal analysis, this Office is prepared to recommend that the Commission find probable cause to believe that Kathleen Cannon knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

II. FACTUAL AND LEGAL ANALYSIS

A. FACTUAL SUMMARY

The Bank of America Corporation is a publicly held corporation headquartered in Charlotte, North Carolina. The Bank's Los Angeles-based Student Banking Division employs

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approximately 160 individuals for the purpose of providing education financing and other banking services to students. The information assembled by the Commission indicates that at all times relevant to this matter, the division was managed by Senior Vice President Kathleen Cannon. In that capacity, Cannon directly supervised nine managers.

The evidence demonstrates that Cannon caused the Bank to reimburse contributions totaling \$7,700 made by eight managers in the Student Banking Division by authorizing the reimbursement of those contributions.¹ As outlined in this Brief, Cannon solicited contributions from these eight managers, instructed them to submit requests for reimbursement of the contribution, and subsequently approved those requests. Exhibits 3 - 17. The chart at Exhibit 1 summarizes the details regarding each individual contribution for which Cannon authorized reimbursement.

The information obtained during the investigation indicates that Cannon began the practice of soliciting contributions from her subordinates at the Bank in 1999, after being informed by staff of Representative Howard P. "Buck" McKeon that she could not use a corporate check to pay for a table at the annual fundraising dinner for McKeon's principal campaign committee, McKeon for Congress. Instead of using a Bank check to cover the cost of the table at the McKeon fundraiser, Cannon made a \$1,000 individual contribution to McKeon for Congress and requested that one of her direct reports, Christian Baehr, Credit Manager, make a personal contribution to McKeon.² The evidence indicates that Cannon told Baehr that he

¹ Seven of these managers reported directly to Cannon ("direct reports"). These managers were Christian Baehr, Robert Rubio, Alec Reinstadler, Don Mills, Sue Ainlian, Dee Cline, and Gemma Boykin. The eighth manager, Dale Robertson, reported directly to Rubio, the Accounts and Production Support Manager, during the relevant time period.

² As the chart at Exhibit 1 demonstrates, the majority of Cannon's fundraising efforts were on behalf of the McKeon for Congress Committee. Cannon had previously made two \$250 contributions to McKeon for Congress in 1998. Between 1998 and 2005, Cannon contributed a total of \$6,450 to the McKeon for Congress committee. During that same period, she contributed an additional \$2,950 to other political committees. The evidence indicates that Cannon did not seek reimbursement from the Bank for any of these contributions. Exhibit 2.

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could expense his contribution. Baehr submitted a request for reimbursement of his \$500 contribution to Cannon, she authorized the reimbursement, and the Bank reimbursed Baehr for his contribution. Exhibit 3.

The evidence gathered in this investigation indicates that the next instance of Cannon's authorizing the reimbursement of contributions with Bank funds occurred in December 2001. At that time, Alec Reinstadtler, Sales Manager, Robert Rubio, Accounts and Product Support Manager, and Don Mills, Manager of Sales and Marketing, contributed \$250 each to attend a breakfast fundraiser for Senator Tim Johnson. Each submitted a request to Cannon for reimbursement. With Cannon's approval, the Bank issued reimbursements to each manager. Exhibit 4.

In April of 2002, Reinstadtler contributed \$1,000 in order to participate in a golf outing to benefit the McKeon for Congress committee. According to an e-mail Reinstadtler sent to one of the organizers a week prior to the outing, Cannon had instructed him to obtain a receipt "in order to make a record of the event." Exhibit 5. In response, Reinstadtler received an e-mail stating "Alec, we have received your contribution for \$1,000 for our annual fundraising event." *Id.* Reinstadtler submitted his request for reimbursement with the e-mail receipt attached. Cannon approved the request and the Bank issued the reimbursement. *Id.*

On October 18, 2002, Baehr and Mills each contributed \$500 to McKeon for Congress.³ Each submitted a request for reimbursement. Cannon authorized Baehr's and Mills's requests for reimbursement, which the Bank duly issued. Exhibit 6.

³ Cannon also contributed \$500 to McKeon for Congress on the same date that these contributions were made. The evidence indicates that the contributions were made to purchase tickets for the committee's October 25, 2002 fundraiser. Baehr's expense report included a copy of the response card for this event. Exhibit 6.

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The evidence obtained during our investigation indicates that Cannon began soliciting contributions via e-mail in 2003. The first of these e-mails, dated November 3, 2003, contained the subject line "McKeon dinner – Important" and was sent to eighteen Bank employees, including seven of Cannon's direct reports. Exhibit 7. Cannon stated that she "agreed, once again to purchase a table" for McKeon's annual dinner and needed eight people to join her. *Id.* In response to an e-mail query from direct report Susan Ainilian, Manager of Service and Audit Support, about the cost of attending, Cannon simply stated, "you can expense it." Exhibit 8. In addition to Ainilian, five other direct reports each contributed \$400 to McKeon for Congress: Baehr, Mills, Rubio, Dee Cline, Strategic Initiatives Manager, and Gemma Boykin, Manager of Loan Origination, Loan Support, Voice of the Customer. Each submitted a request for reimbursement of their respective contribution and, with Cannon's authorization, the Bank reimbursed all six contributions. Exhibit 9.

In December 2003, Reinstadtler and Mills made contributions to Earl Pomeroy for Congress during the course of the Consumer Banking Association conference in Washington, D.C. Each contributed \$250 to the committee, but only Mills requested and received, with Cannon's authorization, reimbursement for this contribution. Exhibit 10.

On February 20, 2004, Cannon sent eight of her direct reports an e-mail solicitation for a McKeon for Congress committee fundraiser being held on April 1, 2004 in Washington, D.C. Exhibit 11. This e-mail states, in pertinent part, "I need two checks for a McKeon fundraiser (hopefully two people that did not write before). I will show you how to expense it so you will not be out of pocket." *Id.* Rubio and Ainilian contributed \$150 to McKeon for Congress in response to the e-mail. Each requested reimbursement, and the Bank reimbursed both contributions with Cannon's authorization. Exhibit 12.

On June 11, 2004, Cannon issued another e-mail solicitation inviting Ainilian, Baehr, Boykin, Cline, Evans, Mills, Rubio, and Bob Kolich, Portfolio Management Manager, as well as eighteen other Student Banking Division employees to a July 9, 2004 fundraising dinner to benefit the McKeon committee. Exhibit 13. After providing details regarding the event, the e-mail states, in pertinent part, "[t]he tickets can not be expensed as it is a contribution." *Id.* This statement directly contradicts Cannon's assurance in the February 20, 2004 e-mail that she would show those who contributed "how to expense it." Exhibit 11. The investigation indicates that Cannon telephoned Cline to follow up on the June 11th e-mail solicitation and instructed Cline to send in a contribution via intra-office mail, informing her explicitly that she could expense the contribution. Cline, Mills and Rubio each contributed \$300 to McKeon for Congress and Boykin contributed \$600 to the committee. Only Cline and Boykin requested reimbursements, which the Bank made with Cannon's authorization. Exhibit 14.

Cannon also verbally solicited a contribution to the July 9th McKeon fundraising dinner from Dale Robertson, Senior Technology Manager, who was not on the June 11, 2004 e-mail distribution list. In an interview, Robertson stated that Cannon called him into her office, informed him she wanted him to participate in the function and specifically instructed him to contribute \$600 to the McKeon Committee. According to Robertson, Cannon stated that he would be reimbursed for the contribution and also directed him to categorize the expense as "customer entertainment." Robertson also believes that Cannon gave him the copy of the invitation to the July 9th fundraising event, which he attached to his expense report. Exhibit 15. Robertson followed Cannon's instructions in filling out the expense report, although Rubio, as his direct supervisor, actually signed off on his request for reimbursement. Exhibit 16.

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On July 8, 2005, Cannon sent a fourth and final e-mail, this time to Rubio, Boykin, Baehr, Cline, Mills and Robertson soliciting contributions for a McKeon for Congress fundraiser being held on July 9, 2005. Exhibit 17. Cannon states in the e-mail, "I would ask each of you to write a check for \$250 and then expense it as business development. I have a receipt for each of you to use in your expenses. Thanks – I will not mail the check until you get reimbursed." *Id.* The information gathered during our investigation indicates that Boykin specifically questioned Cannon regarding the propriety of having the Bank reimburse employee contributions, and Cannon admitted that she knew the practice was in violation of the Bank's ethics rules. It appears that any checks Cannon received in response to her July 8th e-mail were never delivered to McKeon for Congress.

B. LEGAL ANALYSIS

Under the Act, corporations and national banks are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office and corporate officers are prohibited from consenting to such contributions. 2 U.S.C. § 441b(a). In addition, the Act provides that no person shall make a contribution in the name of another person, or knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. § 441f, 11 C.F.R. § 110.4(b)(iii). The facts, as outlined on pages 2 – 6 of this Brief, demonstrate that Cannon, an officer of the Bank of America Corporation, approved \$7,700 in corporate reimbursements for eight Bank employees and knowingly assisted in making contributions in the name of another in violation of 2 U.S.C. §§ 441b(a) and 441f.

The evidence, as outlined below, provides sufficient basis for finding that Cannon's violations were knowing and willful. The knowing and willful standard requires knowledge that

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one is violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Taking steps to disguise the source of funds used in illegal activities may reasonably be explained as a "motivation to evade lawful obligations" and will also be considered evidence of knowing and willful behavior. *Id.* at 213-4 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

First, in 1999, McKeon for Congress explicitly told Cannon that the committee could not accept "corporate checks." Cannon's response to this information was to circumvent the prohibition against using corporate funds by soliciting a contribution to the committee from one of her direct reports and then authorizing the reimbursement of that contribution with Bank funds. Second, on July 11, 2004, Cannon sent an e-mail solicitation to several direct reports soliciting contributions to the 2004 McKeon for Congress fundraiser, which included the statement – "[t]he tickets can not be expensed as it is a contribution." Exhibit 13. This statement demonstrates that Cannon understood that reimbursing contributions with Bank funds was prohibited. Despite this apparent understanding, Cannon subsequently approved requests for reimbursements of contributions made by her direct reports.⁴ Third, it appears that Cannon recognized reimbursing contributions was improper, in part, because her e-mails only explicitly stated that contributions could be reimbursed when the recipient list was restricted to those employees under her direct control. Specifically, e-mails issued exclusively to her direct reports on November 3, 2003 (e-mail response to Ainilian), February 20, 2004 and July 8, 2005 stated

⁴ Cannon subsequently authorized the reimbursement of Cline's \$300 political contribution, Boykin's \$600 political contribution and Robertson's \$600 political contribution to the 2004 McKeon for Congress fundraiser. Exhibits 14 and 16.

that contributions could be reimbursed, while e-mail solicitations issued to a wider audience in the Student Banking Division, dated November 3, 2003 and June 11, 2004, either did not mention the issue of reimbursements at all or stated definitively that the contributions cannot be expensed. Exhibits 8, 11, 13 and 17. Therefore, Cannon's actions, as described above, demonstrate a knowing and willful disregard of the law.

Accordingly, this Office is prepared to recommend that the Commission find that there is probable cause to believe Kathleen Cannon knowingly and willfully violated of 2 U.S.C. §§ 441b(a) and 441f.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Kathleen Cannon knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

Date

10/9/2009

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